

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: LTDS CORPORATION, Complainant, vs. QWEST CORPORATION, Respondent.	DOCKET NO. FCU-03-51
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**ORDER ESTABLISHING PROCEDURAL SCHEDULE
AND NOTICE OF HEARING**

(Issued December 1, 2003)

On October 22, 2003, LTDS Corporation (LTDS) filed a complaint against Qwest Corporation (Qwest) with the Utilities Board (Board). In its complaint, LTDS asserted that it is a “competitive local exchange service provider,” a “competitive local exchange carrier (CLEC),” a “telecommunications carrier,” and a “local exchange carrier,” as defined by Iowa Code § 476.96(3) (2003) and 47 U.S.C. §§ 153(26) and 153(44) of the Federal Telecommunications Act of 1996. LTDS further asserted that it had adopted the January 14, 1997, interconnection agreement between Qwest and AT&T Communications of the Midwest (AT&T) as modified on May 15, 1998. LTDS asserted that the interconnection agreement (Agreement) between LTDS and Qwest required Qwest to provide certain products and services to LTDS. LTDS further asserted that Qwest violated the Agreement by

refusing to provide requested products and services to which LTDS is entitled pursuant to the Agreement. LTDS alleged that it has been damaged by Qwest's actions and is entitled to a \$2,500/day credit plus waiver of any installation charges pursuant to the Agreement. LTDS requested the Board to require Qwest to provide the requested products and services, provide \$300,000 in credits for the period June 4 through October 4, 2003, plus \$2,500 per day thereafter, and grant it additional relief or penalties against Qwest as the Board deems lawful and supported by the record, including assessment of all costs of this proceeding to Qwest. LTDS filed its complaint pursuant to Iowa Code §§ 476.101(8), 476.3(1), 199 IAC 6, and the Agreement, and requested an expedited procedural schedule pursuant to § 476.101(8).

Qwest filed an answer on November 12, 2003. In its answer, among other things, Qwest denied that LTDS meets the definition of "competitive local exchange carrier," denied that LTDS had a right pursuant to 47 U.S.C. § 252(i) to adopt the Agreement, denied that LTDS' purpose for ordering the requested circuits was to carry voice traffic, denied that it was required to provide the products and services in the manner alleged by LTDS, and stated that the relief sought by LTDS is barred by one or more amendments executed subsequent to the Agreement. Qwest requested that LTDS be denied each element of the relief sought and that the complaint be dismissed.

The Board issued an order on November 25, 2003, initiating this formal complaint proceeding and assigning the case to the undersigned administrative law judge. In the order, the Board found the 90-day limit of Iowa Code § 476.101(8)

does not apply, but stated it believed the parties would benefit from a quick resolution and instructed the undersigned to take appropriate steps to resolve the matter in a timely manner.

A hearing regarding this complaint will be held pursuant to Iowa Code § 476.3(1) and 199 IAC 6.5.

The statutes and rules involved in this case include various provisions of Iowa Code chapter 476 and the Federal Telecommunications Act of 1996 and Board rules at 199 IAC chapters 6 and 7.

The issues

The issues in this case generally involve the request for the products and services listed in the complaint made by LTDS to Qwest on May 22, 2003, and the subsequent actions by both parties. Details of the issues are contained in the complaint filed by LTDS and the answer filed by Qwest. Other issues may be raised by the parties prior to the hearing.

Prepared testimony and exhibits

All parties will have the opportunity to respond and present evidence and argument on all issues involved in this proceeding. Parties may choose to be represented by counsel at their own expense. Iowa Code § 17A.12(4). The proposed decision and order that the administrative law judge will issue in this case must be based on evidence contained in the record and on matters officially noticed. Iowa Code §§ 17A.12(6) and 17A.12(8).

The submission of prepared evidence prior to hearing helps identify disputed issues of fact to be addressed at the hearing. Prepared testimony contains all

statements that a witness intends to give under oath at the hearing, set forth in question and answer form. When a witness who has submitted prepared testimony takes the stand, the witness does not ordinarily repeat the written testimony or give a substantial amount of new testimony. Instead, the witness is cross-examined concerning the statements already made in writing. The use of prepared testimony and submission of documentary evidence ahead of the hearing prevents surprise at the hearing and helps each party to prepare adequately so that a full and true disclosure of the facts can be obtained. Iowa Code §§ 17A.14(1), 17A.14(3). This procedure also may shorten the length of the hearing and spares the parties the expense and inconvenience of additional hearings.

In the complaint and answer, LTDS and Qwest have referred to certain products and services. In their prepared testimony, LTDS and Qwest must explain the technical aspects of all allegations in the complaint and answer in layman's terms. In particular, LTDS and Qwest must explain all acronyms, explain in detail what all the products and services referred to are and how they work, explain the interconnections referred to, and explain in detail how the requested products and services will work with the existing systems. If the parties agree on certain portions of the technical aspects of the case, or any other facts in the case, they must file stipulated facts prior to the hearing pursuant to the schedule set forth below. The parties must provide evidence to support each of the allegations contained in the complaint and answer. Qwest must explain paragraph 24 of its answer and provide copies of all referenced amendments. Since LTDS requested expedited review and the Board ordered the undersigned to resolve the matter in a timely fashion, the

parties should take particular care to fully explain their positions and the technical aspects of the case in their prefiled testimony and any stipulated facts. In addition, briefs in support of the allegations in the complaint and answer must be filed prior to the hearing in accordance with the schedule set forth below.

Party status

The Consumer Advocate Division of the Department of Justice (Consumer Advocate), Qwest, and LTDS are currently the parties to this proceeding.

The materials that have been filed in this docket are available for inspection at the Board Records Center, 350 Maple Street, Des Moines, Iowa 50319. Copies may be obtained by calling the Records Center at (515) 281-5563. There will be a charge to cover the cost of the copying.

IT IS THEREFORE ORDERED:

1. On or before December 15, 2003, LTDS must file prepared direct testimony and exhibits as discussed in the body of this order. LTDS should use numbers 100 and following to mark its exhibits.
2. On or before December 31, 2003, Qwest must file prepared rebuttal testimony and exhibits as discussed in the body of this order. Qwest should use numbers 200 and following to mark its exhibits.
3. If the Consumer Advocate is going to file prepared rebuttal testimony and exhibits, it must do so by December 31, 2003. The Consumer Advocate should use numbers 300 and following to mark its exhibits. Any intervenor who chooses to file prepared testimony and exhibits must do so on or before December 31, 2003.

4. LTDS and Qwest must file stipulated facts as discussed in the body of this order on or before December 31, 2003. If LTDS and Qwest file stipulated exhibits with the stipulated facts, the exhibits should be marked "Stipulated Exhibit 400" and following. LTDS and Qwest must give the Consumer Advocate notice of proposed stipulated facts no later than December 22, 2003. In the stipulation of facts, LTDS and Qwest must state whether the Consumer Advocate joins in the stipulation of facts. If the Consumer Advocate disagrees with any of the stipulated facts, it must include testimony to support and explain its position with its prepared testimony.

5. LTDS and Qwest must file briefs as discussed in the body of this order on or before January 5, 2004. If the Consumer Advocate chooses to file a brief, it must do so on or before January 5, 2004.

6. A hearing for the presentation of evidence and the cross-examination of witnesses will be held in the Board Hearing Room, 350 Maple Street, Des Moines, Iowa, on Thursday, January 8, 2004, beginning at 10 a.m. The parties should plan to come to the hearing room at 9:30 a.m. and be prepared to discuss matters that may expedite or improve the functioning of the hearing. Each party must provide a copy of its prepared testimony and exhibits to the court reporter. LTDS must provide a copy of any stipulated facts and exhibits to the court reporter. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at (515) 281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

7. If needed, a post-hearing briefing schedule will be established at the conclusion of the hearing.

8. In the absence of objection, all data requests and responses referred to in oral testimony or on cross-examination will become part of the evidentiary record of these proceedings. Pursuant to 199 IAC 7.2(6), the party making reference to the data request must file one original and three copies of the data request and response with the Executive Secretary of the Utilities Board at the earliest possible time.

9. Any person not currently a party who wishes to intervene in this case must meet the requirements for intervention in 199 IAC 7.2(7). Due to the expedited schedule of this case, the person must file a petition to intervene on or before ten days following the date of issuance of this order, unless the petitioner has good cause for the late intervention. 199 IAC 7.2(8).

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 1st day of December, 2003.